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Kemal Guler

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EXAMINER

DUNHAM, JASON B

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEMAL GULER and FRANCIOS RENE PAUL

Appeal 2009-004461
Application 10/726,432
Technology Center 3600

Decided: September 14, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 3-5, 8-11, 13, 15-17, and 20-21 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is directed method that comprises providing information regarding an online auction to a computer system, and predicting an auction outcome for each of the plurality of potential feedback rules for the online auction (Spec. [0002]). Claim 3, reproduced below, is representative of the subject matter of appeal.

3. A method comprising:

providing information regarding an online auction type to a computer system; and

predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type;

allowing an auction end-user to select a feedback rule to implement from the plurality of potential feedback rules based on the predicted auction outcomes; and

implementing a single auction using the feedback rule selected by the end-user.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Guler	US 2002/0174052 A1	Nov. 21, 2002
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The following rejections are before us for review:

1. Claims 3-5, 8-11, 13, 15-17, and 20-21 are rejected under 35 U.S.C. § 102(b) as anticipated by Guler.

THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

This issue turns on whether Guler discloses “predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type.”

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:¹

FF1. Guler is directed to an automated decision support system for designing auctions (Title).

FF2. Guler has disclosed an outcome prediction module 40 that formulates for each item to be auctioned the relationship between the auction format and other auction parameters [0063].

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF3. Guler has disclosed that the seller has to determine the auction procedure which includes auction formats including the reserve price, bid increments, information disclosing policy, participation rules, etc. [0006].

FF4. Guler in paragraphs 0063, 0006, and 0007 does not disclose predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type.

PRINCIPLES OF LAW

Principles of Law Relating Claim Construction

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Principles of Law Relating to Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim.

ANALYSIS

The Appellants argue that the rejection of claim 3 is improper because Guler fails to expressly or inherently teach “predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type” (Br. 14, emphasis original). The Appellants argue that Guler is concerned with selecting from disparate auction models (e.g. Dutch, English) and not selection of a feedback rule used with a particular bidding model (Br. 11-12).

In contrast the Examiner has determined that Guler discloses the cited limitation asserted as missing by the Appellants in Figure 4 and paragraphs 6, 7, and 63 (Ans. 3, 5-6).

We agree with the Appellants. The Specification states “Each auction format may have different feedback rules, defined as a set of rules that determine the information revealed to the bidders, as well as when and how the information is revealed [0001]. Giving the term “feedback rules” its broadest reasonable interpretation in light of the Specification, we take the term to refer to “a set of rules that determine the information revealed to bidders, as well as when and how the information is revealed” in some manner. Note that the claim 3 requires “*predicting*, by a software program executing on the computer system, *an auction outcome for each of a plurality of potential feedback rules* for the online auction type.”

Guler is directed to an automated decision support system for designing auctions (FF1). Guler does disclose the use of an outcome prediction module 40 that formulates for each item to be auctioned the relationship between the auction format *and other auction parameters* (FF2)

but it is *not disclosed* that these “other auction parameters” *specifically include* feedback rules defined as “a set of rules that determine the information revealed to bidders and how the information is revealed.” Guler also discloses that the seller has to determine the auction procedure which includes auction formats including the reserve price, bid increments, and information disclosing policy, participation rules, etc. (FF3). While the information disclosing policy or bid increments may refer to “information revealed to bidders” it does not show as required prediction of “an auction outcome for *each* of a plurality of potential feedback rules for the online auction type.” Guler in paragraphs 0063, 0006, and 0007 does not disclose “predicting, by a software program executing on the computer system, an auction outcome for each of a plurality of potential feedback rules for the online auction type” (FF4) and for this reason the rejection of claim 3, and dependent claims 4-5, is not sustained. Claims 8, 13, and 20 contain limitations similar to those of addressed for claim 3 and the rejection of these claims as well as their dependent claims 9-11, 15-17, and 21 is not sustained for these same reasons.

CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 3-5, 8-11, 13, 15-17, and 20-21 under 35 U.S.C. § 102(b) as anticipated by Guler

DECISION

The Examiner’s rejection of claims 3-5, 8-11, 13, 15-17, and 20-21 is reversed.

Appeal 2009-00461
Application 10/726,432

REVERSED

JRG

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